

Department of Planning and Budget
2020 Special Session I - Fiscal Impact Statement

1. Bill Number: SB5075

House of Origin Introduced Substitute Engrossed
Second House In Committee Substitute Enrolled

2. Patron: DeSteph

3. Committee: Senate Committee on the Judiciary

4. Title: Injury to property or persons by persons unlawfully or riotously assembled; penalty.

5. Summary: The proposed bill provides that any person or persons, unlawfully or riotously assembled, who pull down, injure, or destroy, or begin to pull down, injure, or destroy, the property of another where the cost of damage to such property is \$1,000 or more is guilty of a Class 6 felony.

6. Budget Amendment Necessary: Yes. Item 402

7. Fiscal Impact Estimates: Preliminary (see Item #8)

8. Fiscal Implications: Currently, if any person or persons, unlawfully or riotously assembled, pull down, injure, or destroy, or begin to pull down, injure or destroy any dwelling house or other building, or assist therein, or perpetrate any premeditated injury on the person of another, the person is guilty of a Class 6 felony. The bill expands this provisions to include damage to the property of another where the cost of the damage is \$1,000 or more.

Currently, intentional destruction of any property or monument where the cost of damage is \$1,000 or greater is punishable as a Class 6 felony under § 18.2-137(B). Based on the data obtained by the Sentencing Commission, for fiscal year (FY) 2014 through FY2019, two offenders were convicted of a felony under § 18.2-414 for causing injury to property or persons during a riot. This offense was the primary, or most serious, offense for one offender, who was sentenced to a local-responsible (jail) term of four months.

For fiscal FY 2018 and FY 2019, 407 offenders were convicted of a Class 6 felony for damage/destruction of any property or monument, \$1,000 or more for violations of §18.2-137(B). This charge was the primary, or most serious, offense in 167 cases. While 40.7% of these offenders did not receive an active term of incarceration to serve after sentencing, 46.1% were sentenced to local-responsible (jail) terms for which the median sentence length was 6.0 months. For the remaining 13.2% of offenders sentenced to serve a state-responsible (prison) term, the median sentence length was 1.4 years.

Additionally, felony convictions under § 18.2-414 are defined as violent offenses for the purposes of the sentencing guidelines (per § 17.1-805), while convictions under § 18.2-137(B) are not. Offenders with prior convictions for violent felony offenses receive “enhancements” on

the sentencing guidelines that increase the recommended sentences for those offenders. Therefore, based upon existing data, the bill may expand the applicability of an existing felony to additional acts, for offenses not currently eligible for conviction under § 18.2-137(B). Additionally, it would increase future sentencing guidelines recommendations for offenders with prior convictions under § 18.2-414 compared to those with § 18.2-137(B) convictions, and would potentially result in longer sentences imposed by judges. Due to both aspects of this proposal, it may increase the future state-responsible (prison) bed space needs of the Commonwealth. However, existing databases do not provide sufficient detail to determine the number of affected offenders or the changes in sentencing patterns likely to result from enactment of the proposal. As a result, the magnitude of the impact on prison bed space needs cannot be quantified. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 1289 of the Acts of Assembly of 2020 requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

There is not enough information available to reliably estimate the increase in jail population as a result of this proposal. However, any increase in jail population will increase costs to the state. The Commonwealth currently pays the localities \$4.00 a day for each misdemeanor or otherwise local-responsible prisoner held in a jail and \$12.00 a day for each state-responsible prisoner. It also funds a considerable portion of the jails' operating costs, e.g. correctional officers. The state's share of these costs on a per prisoner, per day basis varies from locality to locality. However, according to the Compensation Board's most recent Jail Cost Report (November 2019), the estimated total state support for local jails averaged \$34.07 per inmate, per day in FY 2018.

The estimated amount of the necessary appropriation cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.

9. Specific Agency or Political Subdivisions Affected: Department of Corrections, Department of Juvenile Justice, Courts, Commonwealth's Attorneys, Public Defenders, local and regional jails.

10. Technical Amendment Necessary: No

11. Other Comments: None